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No. 89-1632

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1991

STATE OF CALIFORNIA,
Petitioner,

-v-

HODARI D.,
Respondent

On Writ of Certiori
To the Court of Appeals of
California

BRIEF OF WAYNE COUNTY PROSECUTING ATTORNEY AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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STATEMENT OF QUESTION

MAY ONE WHO FLEES FROM THE PRESENCE OF POLICE COMPLAIN WHEN THE POLICE SEIZE PROPERTY THAT HE DISCARDS ALONG THE WAY?

STATEMENT OF THE CASE

Amicus relies upon the parties to provide this Court with the particulars of the instant case.

INTEREST OF THE AMICUS

Amicus is the Prosecuting Attorney for Wayne County, Michigan. Wayne County is the largest County in the State of Michigan, and its criminal court, Detroit Recorder's Court, is among the largest and busiest in the entire United States. Charged with responsibility for litigating all criminal prosecutions within his jurisdiction, the outcome of the current litigation is a matter of primary interest to Amicus, as the precise question involved in this case has arisen often in cases to which Amicus has been a direct party -- including, most recently, the case of People v Mamon, 435 Mich 1; 457 NW2d 623 (1990).

SUMMARY OF ARGUMENT

A chase, being neither a search nor a seizure, cannot violate any provision of the Fourth Amendment.

Moreover, unprovoked flight from the presence of police invites their pursuit; and if one breaks no law by running, the police break no law simply by following.

ARGUMENT

I.

ONE WHO FLEES FROM THE PRESENCE OF POLICE MAY NOT COMPLAIN WHEN THE POLICE SEIZE PROPERTY THAT HE DISCARDS ALONG THE WAY.

"The wicked flee when no man pursueth...."

Proverbs, 28:1

In this case the Court once again confronts the nature of a seizure, and will therefore reexamine its holdings in Michigan v Chesternut, 486 US 567; 108 S Ct 1975; 100 L Ed 2d 565 (1988) and Brower v Inyo County, 489 US ___; 109 S Ct 1378; 103 L Ed 2d 628 (1989) to consider the view of the California Court

of Appeals that a citizen is "seized" for purposes of the Fourth Amendment as soon as the police begin to chase him.

Given the holding below, it is apparent that this Court must intervene to curtail the overly expansive construction of the word "seizure" in the context of the Fourth Amendment, and return to the common understanding of the word. As shown below, in doing so the Court will be aligning the Constitution with practice throughout most of the country, and also with such nonjuridical authorities as Webster, Oxford, and Random House.

A.

WORDS AND THE CONSTITUTION

"[W]hen their task is to interpret and apply the words of a statute, [the] function [of judges] is merely academic to begin with -- to read English intelligently...."

Oliver Wendell Holmes, dissenting in Northern Securities Co v United States, 193 US 197, 401; 24 S Ct 436; 48 L Ed 679 (1904).

"'When I use a word,' Humpty Dumpty said in a rather scornful tone, 'it means just what I choose it to mean -- neither more nor less.'"

Carroll, Through the Looking Glass, Ch. 6.

Quite aside from the legal arguments on the question of "investigatory pursuits," which Amicus is confident the parties will address in their respective pleadings, a consideration of the common English meaning of the terms at issue leads to the conclusion that the lower court erred in its resolution of this case.

From the Medieval Latin word "sacire," meaning to place, the early French, even then in the process of blurring and ennasalizing the Language of the Caesars, took their word "saisir," which meant "to seize." Following the Norman Conquest, and the resulting infusion of Old French into the primitive Saxon tongue, inhabitants of early England found their word "saisen," which is the modern root of our own word "seize." From this, the law gets the concept of "seizen" or, in Britain, "seison" -- the possession of land or chattels, characteristic of freehold estates. And modern English usages reflects the ancient notion of forceful possession: Webster's defines "seize" as "to take possession of....to possess or take by force," Webster's Third New International Dictionary (Unabridged), (1986), 2057; Random House defines a "seizure" as the "act or an instance of seizing," or as "taking possession of an

item, property, or person legally or by force," or as "a sudden attack, as of epilepsy or some other disease." The Random House Dictionary of the English Language (Unabridged 2d Ed), (1987), p 1735. And Oxford defines "seize" as "to put into possession," and "seizure" as the "act of seizing." IX The Oxford English Dictionary, (1961), 402-404. Commonly recognized synonyms of "seize" include the notions of "arrest" and "apprehension," as well as "grabbing" and clutching," while common antonyms include, in various forms, the concept of "release." Random House, supra; Webster's, supra. See also, Roget's International Thesaurus (Fourth Edition, (1979), sec's 761.15, 822.14. By the late Eighteenth Century, it is beyond question that the legal concept of "seizure" included in the Fourth Amendment contained the same notions of dominion and control that had come to dominate the Law of Property. Cf,

Pierson v Post, 3 Caines 175 (NY, 1805). Therefore, the Constitution's protections against "unreasonable seizures" necessarily contains an element of physical possession which the present case appears to lack. One sees this clearly by analyzing the concepts which the lower court equated with "seizure" -- the twin notions of "chase," and "pursuit."

Though each contains slightly different connotations in modern English, both "pursuit" and "chase" imply an active, rather than passive, attempt to overtake an objective or outrun an adversary. "Chase," stemming from the same Vulgar Latin root -- "captiare," to hunt -- which has given us the words "catch" and "capture," implies a more transitory occupation, to the end of attaining a specific end: "the chase," being a synonym for "the hunt," implies a series of acts undertaken in pursuit of a

given object; and one "chases" a person or thing, hoping for attainment, in that capturing the goal of the chase fulfills its objective. "Pursuit," on the other hand, implies a longer-standing commitment: although one may pursue any transitory object, one "pursues" happiness or excellence in a different manner than one "chases" a fox during a foxhunt, or "chases" after a rainbow; and the word's roots, from the latin "prosequi," to follow or pursue, is the source of other words implying long-term, glacially-paced, or open-ended commitments even in the field of law -- such as "sue" or "prosecute." Random House, supra at 349, 1570.

Given the specific limitation of the Fourth Amendment to "unreasonable searches and seizures," extending the notion of "seizure" to include "chases" or "pursuits" appears to do violence to both the letter and intent of the

Amendment: the freedom of the quarry prior to its reduction to possession is an elementary principle of the Law. Pierson v Post, supra. And a "seizure" -- the exercise of physical dominion over a person or thing -- implies the successful termination of a pursuit, not its onset. Moreover, unless one adopts the notion that the Judicial Powers of government include the right to rewrite any text, whether statutory or Constitutional, which does not accord with the Judiciary's institutional or subjective preferences, one must accept the limitations of language placed upon words enacted into law; and rejecting such notions of judicial limits means rejecting the wisdom -- as well as the enacted Law -- of prior generations.

The imprecision of language was not a problem with which the Framers of the Constitution were unfamiliar. In The Federalist, Madison wrote perceptively of

the limitations of speech as a medium of communication. "The use of words is to express ideas," he wrote in The Federalist:

> "Perspicuity, therefore, requires not only that the ideas should be distinctly formed, but that they should be expressed by words distinctly and exclusively appropriate to them. But no language is so copious as to supply words and phrases for every complex idea, or so correct as not to include many equivocally denoting different ideas. Hence it must happen that however accurately objects may be discriminated in themselves, and however accurately the discrimination may be considered, the definition of them may be rendered inaccurate by the inaccuracy of the terms in which it is delivered. And this unavoidable inaccuracy must be greater or less, according to the complexity and novelty of the objects defined. When the Almighty Himself condescends to address mankind in their own language, his meaning, luminous as it must be, is rendered dim and doubtful by the cloud medium through which it is communicated." Madison, The Federalist, Number 37.

Within the limits imposed by the imperfections of human language, courts have both a unique power, and a burdensome responsibility: though it is

the Judiciary that gives substance to Law, through the power of adjudication, a court's first responsibility is to give form and weight to the Lawmaker's intent. While this implies the need for constant attention to detail, applying the rules of society in the context of the infinite diversity of creation, cf, Porter v C O Porter Machinery Co, 336 Mich 437; 58 NW2d 135 (1953), it requires the judge to apply not his own subjective preferences, but those of the Lawmaker's, and to adopt not the construction best suited to the judge's personal conception of Justice, but rather to enforce the law given him by statute, constitution, or precedent. See, eg, Holland v Heavlin, 299 Mich 465; 300 NW 777 (1941); People v Barltz, 212 Mich 580; 180 NW 423; 12 ALR 520 (1920).

While it is doubtful that the Framers anticipated the revolution in transportation and communication that has transformed our country, it is often

possible to apply their underlying principles of government to many of the cases arising today, and to the extent that this is possible, there is no need for further guidance from the Legislature or the people. However, in dealing with such concerns, courts are not free to disregard History in favor of furthering their own subjective points of view. And where the policies underscoring the provisions of the Constitution conflict with a judge's own preference, it is the Constitution -- the Framer's policy choices, as reflected in the Framer's own language -- which must control. Cf, Decher v Vaughn, 209 Mich 565; 177 NW 388 (1920)(Words used in constitution to be given natural and popular meaning used by people who adopted it); Manthey v Vincent, 145 Mich 327; 108 NW 667 (1906)(Fear of consequences is no reason for declining to give Constitutional provision its intended meaning, the remedy for unwise policies properly being

within People's prerogatives as sovereign).

The concept of "hue and cry" being as old as the Common Law, 4 Blackstone, Commentaries, 293; see V Oxford, at 436-437,[1] and the tradition of the hunt being an important part of the English heritage,[2] it is inconceivable that the Framers simply confused the concepts of "chase" and "seizure;" it is, after all, folklore wisdom that a "bird in the hand is worth two in the bush" -- and our culture has long recognized the essential difference between practical accomplishment, and unrealized potential. Equally unlikely is the notion that by limiting the Fourth Amendment to "searches and seizures," they also intended to prevent "chases," since the

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1 Amicus is aware of no recorded case in which a thief who was never caught was actually hung for his crimes.

2 Neither is Amicus aware of any known instance of a hunting trophy taken from an animal which successfully avoided the hunter.
See infra, pp 32-33.

term is not implied by the concept of either "search" or "seizure," and the degree of intrusiveness stemming from a policeman following someone on a public street hardly approaches the level of an actual seizure -- except for one with a guilty conscience, to whom any approach will be a threat, and apprehension anticlimactic. Cf, Poe, The Tell-Tale Heart, (1845).

Therefore, on strictly linguistic terms, it appears that the lower court erred in deciding this case, and that this Court should rectify the matter without further delay.

B.

ANALOGUES AND ILLUSTRATIONS

While the concept of "chase" does not imply a successful "seizure," and simple logic would discount the likelihood that one engaged in flight

does not claim the right to flee,[3] the life of the law is not logic, but experience. Holmes, The Common Law, (1923), p 1. Even so, a brief look at examples from human experience suggests that the lower court took an overly expansive view of the term "seizure," and that this Court should intervene to return the Constitution to conformity with standard English usage.

1.

The Besieged Fortress

The distant whine of a lonely dog greets the grayness of daybreak. A mist rises from the puddled streets, still damp from the early morning rain. The darkened window, closed against the chilled night air, shows no sign of stirring inside. Across the road, the empty branches of an old, dying tree shake softly against the coming wind.

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[3] See United States v Mendenhall, supra at 554 (Opinion of Stewart, J)(Person is seized "only if, in view of all the circumstances..., a reasonable person would have believed that he was not free to leave").

A majority of the Court subsequently adopted Justice Stewart's formulation. See, eg, INS v Delgado, supra and Michigan v Chesternut, supra.

Suddenly, an angry voice shatters the stillness.

"Come out with your hands up! You are surrounded -- give yourself up!"

By force of law or force of arms, a siege is one of the ancient tools of conflict, by which opposing forces contend, matching the strength of the besieger against the resolve of the besieged. A siege, by its nature, implies some level of physical control by the besieging party: those besieged cannot ordinarily leave of their own free will, and often depend upon their adversary's grace or sense of humanity for the necessities of their own survival -- such as food and water.

Even so, and despite the fact that the besiegers have attained a measure of physical control over their target, history teaches us that a "siege" does not imply a "capture" -- and, in fact, it is the besieged's act of defiance that causes the standoff in the first place.

Moreover, the lessons of the past show that the end result of a "siege" is far from certain -- and it is that very uncertainty that raises hope in the breasts of the besieged, and inspires them to continue their resistance.

Amicus submits that the historical record shows that a "siege" -- even by overwhelmingly superior numbers -- does not constitute a "seizure." On the contrary, a "seizure" occurs in the face of resistance only when the resistance is overcome by the application of force, as at Troy[4] or the Alamo,[5] or by the surrender of the resistor, as at Yorktown.[6] Cf, Brower v Inyo County,

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[4] See Homer, The Iliad, Books XII-XXIV; Virgil, The Aeneid, Book II.

[5] See Tinkle, 13 Days to Glory: The Siege of the Alamo, (1958).

[6] See Middlekauf, The Glorious Cause: The American Revolution, (1982) at 559-570.

supra. A different view, holding a "seizure" effective at the onset of the siege, would require overturning the results of Dunkirk[7] and Bastogne[8] -- and reopening questions settled on the battleground is beyond the jurisdiction of any court of law.[9]

2.

The Beleagured Fox

"Yoicks!"

Leaping boldly over a row of hedges, Buffington was the very picture of lordly splendour. Trimmed brightly in immaculate scarlet, his proud horse a vision of equine peerage, he cheered the hounds on to glory. A good way behind, the huntsman kept the rest of the party at a respectful distance; one did not, after all, outrace a Buffington.

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[7] See Churchill, Blood, Sweat, and Tears, (1941) "Speech to the House of Commons, June 4, 1940," pp 289-297 (Noting that the British Army escaped).

[8] See Eisenhower, Crusade In Europe, (1948), pp 342-365 (Noting that the siege was broken).

[9] See Middlekauf, supra at 451, for insight into the results of British efforts to suppress the American revolution through the use of proclamations.

Not on his own grounds.

And certainly not on a hunt.

"Yoicks!" he cried again, guiding his horse over yet another hedge -- this one separating his Northern Estate from his housekeeper's garden. Clomping regally through a row of cabbages, ignoring the clamourous squawks of the rabble who lived in the nearby cottage, he spurred his horse ahead, not wishing to fall too far behind the dogs.

The hounds were baying loudly this time, more loudly than ever. The fox's scent must be strong, mused His Lordship; so much the better. The morning rains had dampened the grounds, and all this clop-cloping about was soiling his boots. Best to lay into the rotter at once, he thought. It was getting rather close to tea time, anyway. And the bloody saddle was giving a spot of bother to his lordly underside.

The hounds bounded over the stone fence that stood at the boundary of the Western Estate. The little bugger must be getting tired, he smiled; no fox could run forever. And they were nearing the Bog. The devil would be trapped -- hemmed in on all sides. Then he could send the dogs in for the kill. He neared the fence in glorious anticipation.

"Yoi--ya--ha--hooey!" cried Lord Buffington, as he soared over the hurdle, sailing magnificently from his vision of equine peerage -- the horse having entertained sudden reservations about following His Lordship into the mud fields where the hounds lay, foundering and squirming in the mire.

From a vantage a quarter-mile from where he'd doubled back over his trail, his rest over, a small reddish animal picked himself up and trotted across an open meadow, into the forest.

From its roots in 15th Century England, modern foxhunting developed into an upper-class pastime in 19th Century Britain. The Huntsman, sending his 15-20 hounds after a suspected fox, would lead a small, elite band of riders[10] through glen and dale, over hills and across gulleys, seeking the small, reddish canine known as vulpes fulva -- or, in common parlance, the "fox." Upon spotting a fox, a hound would bay, while human participants would signal by sounding horns and crying "Tally-ho." This was the signal for the pursuit to begin in earnest; and, if successful, the Huntsman would award any remaining parts or pieces of the fox as trophies to those of his party whom he deemed worthy of such high honors. 4 Brittanica, 912-913 (1988); 10 Colliers, 245-248 (1987). See

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10 At a traditional fox hunt, those of the true upper crust were clad in scarlet coats; those of lesser rank, if invited at all, wore black. Brittanica, supra.

Amicus could find no study purporting to show whether the fox cares at all about the rank or peerage of his pursuers, but one rather doubts it.

generally, Seth-Smith, Steeplechasing & Foxhunting, (1977).

The fox, at least, seems to know the difference between being chased, and being torn to shreds by a pack of dogs.[11] In fact, one could come to suspect that this is rather the point of the whole affair in the first place: one authority notes that many foxes actually seem to enjoy their role in the "hunt," often opting against the easy avenue of escape in favor of letting the chase continue. Colliers, supra at 245. In any case, the fact that most foxes escape, ibid at 247, seems to militate against the holding of the lower court.

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11 For an application of the principles of the "hunt" to homo sapiens, see Faulk, The Geronimo Campaign (1969)(Cronicling efforts of 5,000 soldiers to "seize" Indian band consisting of 18 men, 13 women, and 6 children) and Beal, "I Will Fight No More Forever": Chief Joseph and the Nez Perce War (1963)(Outlining 1700-mile effort of Indian tribe to avoid combat with United States Army forces and escape into Canada, culminating in "seizure" 40 miles from border).

3.

The Bedraggled Lions

"Fourth and twenty-six, ball on the Detroit 37-yard line. Lions trail the 49ers, 20-16; thirty-seven seconds of playing time remaining. Neither side has a time out left.

"Peete breaks the huddle. Lions line up in the Silver Stretch. San Francisco's in the Prevent Defense, trying to guard against the Bomb. Clock ticking away; Peete calls the signals. Looks like he may be calling an audible. He takes the snap and drops back.

"Peete steps into the pocket -- he's looking deep. But the 49er zone is holding. There's no one open -- and the pass rush breaks through! Peete scrambles desperately, looking for a receiver. He dumps the ball off to Barry Sanders at the line of scrimmage.

"Sanders breaks a tackle and takes off down the sidelines. He gets a block -- and he's off to the races! He's at the 50-! -- the 45-! -- the 40-! There's only one man who can stop him -- angling now to cut him off -- the 30!-- the 25!-- and it's a foot race to the goal line...!"

Under the lower court holding in this matter, a seizure occurs "when the officer takes action to prevent a citizen's exit," and that given a citizen's exercise of his "right to leave

at the approach of police," the ensuing detention begins "as soon as [one sees] the officer running toward him." In re Hodari D, supra at 265 Cal Rptr 83, 84. Under this analysis, a fleer's own subjective motivation is immaterial, and his unwillingness to submit to the pursuer's demonstration of intent has no relevance to the question of seizure. Thus, he is "constructively" seized at the moment the chase begins, and the Law will admit no argument to the contrary: as "pursuit itself...[is] effectively [a] seizure," People v Shabaz, 424 Mich 42, 66; 378 NW2d 451 (1984) cert dism as moot on resp's death 478 US 1017; 106 S Ct 3326; 92 L Ed 2d 733 (1985) ovrld in People v Mamon, 435 Mich 1; 457 NW2d 623 (1990) it follows that a citizen is seized as soon as the police begin to chase him. Applying such a rule to everyday life, we should find that in the ordinary course of events, dreams are achieved at the moment of conception;

each goal we pursue through life is ours merely by wishing; and a football player is tackled not by the application of physical force, but by his opponent's act of will.

The weaknesses of such a view are readily apparent. It is, after all, accomplishment, rather than effort, which wins most of the prizes in life: an Olympic medal goes to the runner who runs the fastest, not to the one who runs the pluckiest race; and it is the effortless genius of Mozart, rather than the persistently plodding mediocrity of Salieri, whom we reward with our undying esteem. Effort, however noble or heroic, achieves value only as a means toward accomplishment -- for it is pointless and empty as an end in itself, and depends upon some transcending goal to give it meaning.

Striving, therefore, is not the same

as attainment; and any law which equates the two has divorced itself from the human reality that gives it vitality and purpose.

C.

FLIGHT, SUSPICION, AND REASON

While unnecessary to the resolution of this case, the lower court's opinion raises several points which warrant further discussion.

The underlying premise of California Court of Appeals was that a citizen's act of fleeing from the presence of police does not justify any police interest. In re Hodari D, supra at 265 Cal Rptr 84. This accepted as a given, and the Court concluding that a chase was really a seizure, it followed that the "the facts knows to the officers at the time they began [the] chase...did not constitute specific and articulable facts," In re

Hodari D, supra at 85, which provide "a reasoned, articulable basis to conclude that criminal activity was afoot...." People v Shabaz, supra at 63. As shown above, the court having erred in concluding that chases were seizures, an erroneous result was inevitable -- for granting the point that a citizen breaks no law merely by running, elementary logic would hold that the police can break no law simply by tagging along behind. Cf, Michigan v Chesternut, supra. However, this Court may now prevent future errors by recognizing the fallacy in the first erroneous assumption in the syllogism, and acknowledging the fact that while not justifying an arrest, flight does invite pursuit -- and unprovoked flight from the presence of police justifies an inquiry into the reason for such odd behavior.

The insight that a guilty conscience can cause one to run from shadows is as

old as the Book of Proverbs, 28:1, and as timeless as the wisdom of Juvenal: "This is the first of punishments, that no guilty man is acquitted if judged by himself."[12] Satires, xiii, 2. It was conscience that proved the undoing of the protagonist in The Tell-Tale Heart; and it was Dostoyevsky's realization that torment over one's own misdeeds can exact a heavier burden than the Law that breathed life into Crime and Punishment. Flight is, by its nature, an instinctive act of self-preservation that seeks to remove the actor from the presence of a perceived threat;[13] and if a citizen bolts in unprovoked flight at the sight

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[12] Amicus notes that he was speaking of psychological punishment and honest self-judgment, rather than advocating the wide-scale restructuring of legal institutions.

[13] Cf, Shakespeare, Henry IV, Part I, V, iv, 120 (Noting that "[t]he better part of valor is discretion").
This, in turn, recalls the memorable "Ballad of Brave, Brave, Brave Sir Robin, the Not-Quite-so-Brave-as-Sir-Lancelot," sung by the Worthy Knight's squire in praise of his Master's exploits:
"When danger reared its ugly head,

of the police,[14] it is not unreasonable for them to suspect that his actions stem

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[13](Cont)
"He bravely turned his tail and fled...."
Cleese, Idle, et al, M. Python and the Holy Grail, (1975).
Oddly, neither Mallory nor White records this knight's contribution to Arthur's reign. Mallory, Le Morte D'Arthur, (1470); White, The Once and Future King, (1939). But then, artistic license can excuse a great many minor inaccuracies.

[14] Amicus does not claim that police could provoke a citizen to flee -- for instance, by threats of harassment or physical harm -- and then use his subsequent efforts to avoid trouble as an excuse to detain him. Under those circumstances, however, the citizen's "flight" is readily understandable -- and unreascnable police conduct in provoking one to flee could well render any subsequent seizure and detention unreasonable.
Even so, it would be the act of asserting actual physical control over the unwilling citizen -- by force, or by his coerced acquiescence -- which would constitute the seizure, not the chase itself. Should the citizen be so rash as to discard contraband along the way, it would be his unwise choice of self-help which would prove the source of any subsequent prosecution, rather than the misconduct of the police. It makes no sense, after all, to reward lawbreaking; and if courts are going to grant gratuitous boons to defendants in order to assert control over the police, it makes no sense to bestow such favors on defendants who prefer the remedy of self-help to due process of law.

from a guilty conscience. Michigan v Chesternut, supra at 100 L ed 2d 574 (Kennedy, J, concurring). It is clear, after all, that courts cannot hold the police to impossible standards of prescience or precision, nor require them to form in their own minds the precise legal rationale that hindsight shows the circumstances justify, in order to render their conduct "reasonable" under the Fourth Amendment. Scott v United States, 536 US 128, 138; 98 S Ct 1717; 56 L Ed 2d 168 (1978); People v Arterberry, 431 Mich 381; 429 NW2d 574 (1988). Cf, People v Mitchell, 138 Mich App 163, 167-168; 360 NW2d 156 (1984). And as flight is a sufficiently odd response to the appearance of police to warrant a reasonably prudent officer in concluding that "criminal activity may be afoot," it supplies the "articulable suspicion" necessary to warrant a further inquiry, Terry v Ohio, supra at 21-22, 30, and gives the police ample grounds to detain

the fleer long enough to discover the cause of his flight. Michigan v Chesternut, supra at 100 L Ed 2d 574 (Kennedy, J, concurring).

In any case, granting that courts are the final arbiters of what is "reasonable" under the Constitution, Amicus submits that courts should be careful not to intrude too far into areas beyond their experience or expertise: it is, after all, the police, and not the courts, who deal with crime and criminals on a daily basis; and it is the police, not the courts, who are ultimately charged with keeping our streets safe, and our property secure. Therefore, except under extreme circumstances, courts should respect their experience in determining what actions are necessary or useful to maintain law and order on streets, and to ensure that the rule of Law, rather than that of the Jungle,

prevails in our society. US Const, Art III.

Lastly, Amicus reminds the Court that it is detention, not pursuit, that results in seizure. Michigan v Chesternut, supra; Brower v Inyo County, supra. And in any case, the abandonment of any property seized deprives the defendant of standing to contest seizure.[15] Hester v United States, 265 US 57, 58; 44 S Ct 445; 68 L Ed 898 (1924); People v Kirchoff, 74 Mich App 641; 254 NW2d 793 (1977); Cf, California v Greenwood, 486 US ___; 108 S Ct 1625; 100 L Ed 2d 30 (1988). Abandonment

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15 A presumed causal relationship between a chase and a projected seizure necessarily relies upon speculation about the consequences -- and requires the assumptions of both an ensuing improper detention, and an ensuing improper search. Properly viewed -- given that one may litigate only what happens, and not what might have happened, cf, INS v Delgado, supra at 221 -- an abandonment by a fleeing citizen is a form of self-help, which cannot support the suppression of the item abandoned because of the unforseeable nature of the act.

breaks the chain of causation -- much as a meteor striking Earth does not cause police liability for death of motorist they have stopped unreasonably, who happens to be at the point of landfall. While perhaps responsible for the unjustified detention, they are not responsible for unforseeable consequences -- and much as a bolt from the blue, an ill-advised but otherwise voluntary abandonment of contraband is not a foreseeable consequence of a stop, whatever the justification.

Accordingly, the Court of Appeals holding below is not based upon an accurate reading of the Fourth Amendment, and cannot provide a basis for suppressing evidence in this case.

D.

CONCLUSION

It appears consistent with both the purpose and scope of the Fourth Amendment to hold that one's unprovoked flight from the presence of police provides the justification for a second-tier encounter under the Supreme Court decisions in Terry v Ohio, supra and Florida v Royer, supra. Cf, Michigan v Chesternut, supra, (Kennedy, J., concurring). However, at the very least, the same law that permits a citizen to run from a proffered police encounter permits police to tag along behind him, if only to satisfy their own curiosity. While even one with nothing to hide may feel uncomfortable at the official attention, the Constitution does not guarantee that law enforcement will be faceless, nor that police may not venture out on the streets, for fear of upsetting those with fragile nerves.

Amicus submits that the mere presence of police is a reassurance to those for whom the Law is a protector, rather than an adversary; the only one to whom such a presence is a threat is one with guilty conscience -- and an objective manifestation of that guilty conscience provides police with sufficient grounds to investigate. The contrary rule, requiring police to turn the other way and pretend they saw nothing, not only forces them to ignore the evidence of their senses, but also to suppress the protective instincts that a good policeman needs to execute his duty. Such an outcome is inconsistent with the function of the police in a democratic society, in that forbidding a policeman from discovering what is going on within the range of his own senses severs the Law from its own eyes and ears. More importantly, by demonstrating the Law's inability or unwillingness to keep attuned to the nuances of daily life, it

subverts the very purpose of the Law for the sake of rhetoric, disheartening those who look to the Law for protection, encouraging those for whom the Law is an enemy.

Our courts have recognized the need to recover the confidence and respect of the public, and to avoid "subject[ing] an already much maligned system to further ridicule." People v Moore, 432 Mich 311, 325-326; ___ NW2d ___ (1989). The need to correct the holding of the lower court should therefore be apparent, for such a decision not only conflicts with common perceptions and experience, but is also dangerous to public safety, positively destructive of public order, and likely to make public even more despairing of the ability of democratic institutions to make democracy work -- a system of governance which requires, as a precondition, a Government able to

enforce a rule of law, impose some measure of civility on life, and assure the safety and security needed for freedom to flourish, and law-abiding citizens to prosper. US Const, Preamble; 1963 Const, Art I, sec 1. Cf, Leviathan, supra; The Social Contract, supra.

No Legislative enactment has ever sought to limit the power of police to chase after people who bolt from their presence, and as the Constitution grants courts no legislative power, US Const, Art III, 1-2, judges may not adopt such a rule as a matter of policy. But regardless of any justification for the police conduct at issue, voluntary abandonment deprives a defendant of standing to challenge seizure of item abandoned -- and one who so panics at the sight of police that he discards contraband does so not due to any police conduct, but through the spontaneous

manifestation of his own guilty conscience. Thus, one who runs at the sight of police may not fault them for deciding to tag along, nor challenge the seizure of property he abandons along the way.

Accordingly, the lower court decision in this case is in error, and this Court should reverse.

RELIEF

WHEREFORE, this Court should reverse the holding of the California Court of Appeals.

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JC/mlw